

## FACING THE RISK - PRECIOUS CARGO: MANAGING TRANSPORTATION RISK FOR CHURCHES AND CHARITIES

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### Introduction

We live in a mobile society and Christian charities are also dependent on various forms of automotive transportation for their programs, ministries and events. From retreats and youth trips to a quick run to the bank, many of the everyday activities performed at charitable organizations include some form of automobile transportation. Some churches and charities have ownership of a van, bus or car, however these vehicles are often insufficient to meet all of their transportation needs. Oftentimes, the vehicles used are not owned by the organization but by its employees and volunteers. At other times, rental cars or vans are used to meet temporary demands, or for special events.

Whatever types of vehicles are required, approving them for the organization's use has significant safety and legal implications. Church and charity leaders should understand that they have an obligation to use reasonable care in the selection and approval of any vehicle used for a sponsored program, ministry or event, even vehicles not owned by the organization! In fact the highest risk of potential liability that any church or charity will likely ever face in monetary terms is a multi-million dollar lawsuit resulting from injuries or fatalities suffered in an accident involving a vehicle used on behalf of the organization. Often leaders do not fully appreciate the degree of responsibility they have for owned and personal vehicles on the road each week that are used on behalf of their organization. That is the reason why transportation is often called the "hidden risk" for charities and non-profits.

#### Recent examples of claims involving multi-passenger vehicles:

- A church bus picking up passengers on a Sunday morning makes a sharp right-hand turn at an intersection, going over the curb, injuring twelve passengers on board and two pedestrians
- A 15-passenger van loses control due to a combination of factors, including worn tires and worn brakes, resulting in a head-on collision and the death of eight teenagers returning from a basketball tournament
- An older model bus transporting a seniors group to a gospel concert suffers a fire due to an electrical fault, with all on board fortunately able to evacuate before a total fire engulfs the vehicle
- A bus returning from a Christian campground overturns, killing one child and injuring nine, after drifting onto the



shoulder of the road and losing control due to driver fatigue

- A van travelling on a closed freeway suffers a tire blowout, loses control and overturns, resulting in 7 fatalities and 3 injuries

The purpose of this article is to provide a general overview of the liability risks posed by vehicle transportation, including; (a) Owned or Leased Vehicles, (b) Non-Owned Vehicles, and (c) Rented Vehicles. It will also include practical tips for developing an effective transportation policy for accident prevention and recommendations to ensure that your insurance protection is appropriate to your risk.

## Part One: Owned and Leased Vehicles

The use of multi-passenger vehicles by churches, charities, non-profits and other service organizations is widespread in Canada. However the ownership, maintenance and safe operation of these vehicles carries with it a high degree of responsibility and potential legal liability for the directors, officers and leaders of such organizations. There are many documented cases in both Canada and the United States of fatalities and injuries suffered by passengers during church outings that have been the result of inadequately maintained vehicles and inexperienced or unqualified drivers. Each province has minimum vehicle safety standards and driver licensing requirements for multiple passenger vehicles based on seating capacity and gross vehicle weight. In addition, private and government insurance underwriting rules will dictate premium rates and driver eligibility. However because of the high risk of fatalities and injuries, it is vitally important for your board members to develop a "Transportation Policy" to ensure the safety of your drivers and passengers in owned or leased vehicles, including the following guidelines:

### Driver requirements:

- 1) Should be 25 years of age, or older
- 2) Provide a physical copy of their current valid driver's license each and every year Note: A suspended driver's license violates the statutory conditions of an auto insurance policy and can result in denial or limitation of a claim. A suspension can be the result of the accumulation of demerit points, but it can also happen innocently because of failure to receive and renew a license due to change of address. Either way, it can have serious liability implications for the organization in the event of an uninsured accident.
- 3) Confirm they hold the appropriate class of license for the vehicle. Note: Improper licensing may also violate the statutory conditions of an auto insurance policy and can result in claims being denied or limited by your insurance company.
- 4) Have a minimum five (5) years of driving experience
- 5) Maintain an exemplary driving record, with no at-fault accidents in the past five (5) years and not more than two (2) minor traffic violations in the past three (3) years. Criminal convictions related to driving (i.e. Dangerous Driving, Motor Vehicle Manslaughter, Impaired Driving, etc) or any major traffic violations (i.e. Failure to Remain, Careless Driving, Racing, Excess Speeding 50 km/h or over the posted limit, etc) should disqualify the individual as an approved driver.
- 6) Be required to sign a **Safe Driving Statement** agreeing to drive with extreme care and safety first. This includes abiding by the rules of the road and the standards of the organization, including confirmation that all safety equipment (e.g. seatbelts, child booster seats, air bags) is in working order, that the vehicle is fully insured as required by provincial legislation (preferably \$2,000,000 minimum Third Party Liability coverage), that they will avoid all distractions while behind the wheel, including loud music, eating, using a cell phone, texting, etc., that they will be personally responsible for all traffic and parking violations and that they will notify the authorities immediately of any accident.
- 7) Have prior experience with vehicles of similar size, weight and handling. Note: Many multi-passenger bus and van accidents involving collisions and rollovers resulting in fatalities are due to driver inexperience and a lack of familiarity with braking characteristics, handling and wheel base length. A loaded vehicle takes a significantly

longer distance to stop than an empty one. Don't allow drivers to "practice" with your precious cargo!

- 8) Although multi-passenger vehicles owned by charities are usually registered as private buses and without the same road rights or responsibilities as school buses, it is worthwhile to refer to the driver orientation, training, trip planning, onboard passenger safety, drop off and pickup procedures and other safety tips contained in the resource guides for school buses available through your provincial ministry of transportation, for example; <http://www.mto.gov.on.ca/english/safety/school-bus-safety.shtml>

### Vehicle safety and maintenance program:

- 1) Regular exterior and interior visual checks by driver (lights, windshields, wipers, mirrors, tires, seatbelts)
- 2) Check that the vehicle is equipped with a first aid kit, flashlight, snow brush, ice scraper, etc.
- 3) Scheduled vehicle maintenance on a semi-annual basis
- 4) Maintenance and safety records kept for each vehicle
- 5) Current Liability certificates (original kept in vehicle and copy in office insurance file)
- 6) Up to date safety certificates as required by provincial ministry of transportation
- 7) Avoid the use of older, unreliable vehicles with outdated safety design standards

### Are 15-passenger vans safe?

The 15-passenger van has been the vehicle of choice for many churches, schools, camps, associations and sports teams since the 1980's. In recent years concern has grown about the safety of these vehicles. Between 1990 and 2001, 1441 of these vans were involved in fatal crashes, including 601 single vehicle wrecks and have resulted in 1,924 deaths, according to the U.S. National Highway Traffic Safety Administration. The tragic rollover crash of a high school basketball team riding in a 15-passenger van that resulted in 8 fatalities and 4 injuries in a collision with a semi-trailer truck near Bathurst, New Brunswick renewed concerns about the inherent safety of these vehicles. Transport Canada's study of loaded large passenger van rollover collisions in Canada failed to result in finding any large scale pattern of rollover accidents. However maxi-van manufacturers have strongly recommended that drivers "avoid sharp turns, excessive speeds and abrupt manoeuvres". Safety experts have also added that these vans should only be operated by trained, experienced drivers, should not be overloaded with luggage and should be carefully checked for tire tread wear, as a major cause of rollovers has been tire blowouts. As a result, some churches and youth organizations have chosen to ban the use of large vans for group transportation. Interestingly however, there has actually been a steady decline in accidents, injuries and fatalities suffered in 15-passenger vans since 2005, quite possibly because of the increased awareness by operators regarding the handling limitations of these vehicles.

### Insurance coverage tips:

- 1) Multi-passenger vehicles (vans and buses) should be insured for a minimum of \$5,000,000 Third Party Liability coverage
- 2) Informed consent and parental permission forms should be completed and signed for any field trips involving transportation in owned, chartered or personal vehicles used to transport minors to off-premises events or activities
- 3) Buses and vans should not be loaned to other organizations or individuals as any resulting legal liability

from accidents and injuries will go against your organization as the registered owner and will affect your future claims record, insurability and premium. Exceptions should only be made if the vehicle will at all times be operated by your organization's approved driver(s)

- 4) Do not rent or lease your vehicle to other parties for monetary consideration, as it may be excluded under the statutory conditions of your insurance policy
- 5) Consideration should be given to purchasing Excess or Umbrella Liability protection, up to a combined limit of \$10,000,000 or \$15,000,000, due to the potential for multiple injuries, fatalities and multi-million dollar liability awards **Note:** Whether or not your church, camp, school or charity is required to register your passenger van or bus as private or public, it is instructive to keep in mind that many provinces have increased the minimum required limit of Third Party Liability coverage for public buses to \$5,000,000 for those with a seating capacity of 8 to 12 passengers and to \$8,000,000 for those with a capacity of 13 passengers or more, due to the potential for multiple injuries and high liability awards.

## Part Two: Non-Owned Vehicles

A multi-million dollar lawsuit in British Columbia launched in 2008 against a small church and its board members as the result of fatalities and injuries from an accident involving a personal minivan used to transport passengers to a youth event has raised the awareness of churches and charities to the huge risk posed by the use of non-owned vehicles. Each and every week thousands and thousands of trips are coordinated by churches and charities across Canada utilizing staff, member and volunteer-owned vehicles for transportation to and from church premises for services, Sunday school and mid-week programs, as well as for off-premises events and trips such as conferences, youth rallies, car rallies, gospel concerts and tours. There are now plenty of precedent cases in North American courts in which a business or organization has been held legally responsible for damage, injury or death arising from accidents from use of private vehicles for sponsored programs and events. While the vehicle owner's personal automobile liability insurance is always the primary source of coverage, the following circumstances can easily lead to the sponsoring organization being sued as a defendant party in a liability claim:

- a) The owner's vehicle insurance policy may only contain a limited amount of Third Party Liability coverage (i.e. most provinces require only a statutory minimum of \$200,000 per accident and some cost-conscious policyholders choose the minimum limit, \$500,000 or \$1,000,000.
- b) The driver of the vehicle may be knowingly or unknowingly be driving with a suspended license, which violates the statutory conditions of an automobile insurance policy and automatically reduces the amount of third party liability coverage to the statutory minimum limit (i.e. \$200,000).
- c) Even if the vehicle owner does carry \$2,000,000 or more Third Party Liability coverage, an accident with multiple, serious and permanent injuries can easily result in a multi-million dollar lawsuit. A recent record-setting liability claim in Ontario involving only one victim, a teenage girl who was severely and permanently injured as a passenger in the back seat of an automobile and requiring intensive medical care for the remainder of her life, was settled in September of 2009 in the amount of \$18,400,000!

These cases and others reinforce the importance for churches and charities who are routinely utilizing personally-owned vehicles to ensure the safety of employees, members, guests and program participants as passengers. This can be done by implementing minimum requirements for the use of these vehicles in the organization's transportation policy.

While each vehicle owner or driver may have their own level of safety consciousness, this does not excuse the organization from maintaining a minimum standard of care for any transportation that leaders or volunteers coordinate or supervise. Following are some helpful guidelines that should be included in any transportation policy for the use of personal vehicles:

- Vehicles should be well-maintained, preferably no older than ten (10) years and should not have any unrepaired accident damage, cracked windshields or missing safety equipment
- Drivers should be mature, experienced operators with a recommended minimum age of 25 years (but in no event less than 21 years of age) and five (5) years of actual driving experience. **Note:** According to the Insurance Bureau of Canada, male drivers between the ages of 16 and 25 years make up only 11% of the driving population, but are responsible for 37% of all claims payouts. Regardless of what a parent may consider acceptable, it may be unwise and ultimately judged negligent for an organization to coordinate, encourage or promote the use of teenaged drivers in church-sponsored events. Vehicles operated by teenagers who often value fun and convenience over safety can be a dangerous mix!
- Drivers should sign a **Safe Driving Statement** (refer to Part One).
- Many organizations now have an established pool of authorized drivers who have met minimum age and safety criteria, including having submitted a copy of their driving abstract (i.e. motor vehicle record) from the provincial ministry of transportation confirming that they do not have more than two (2) minor traffic violations in the past three (3) years and do not have any at-fault accidents in the past five (5) years. Any major traffic violations or criminal convictions related to operating a motor vehicle should disqualify an applicant from being a driver on your approved pool of volunteers. This type of screening is an effective way for church leaders to show that they have demonstrated due diligence to avoid placing passengers in a harmful situation and a higher than reasonable risk of death or injury.
- If your organization is sponsoring any car rally or scavenger events (e.g. "The Amazing Race") make sure that it is not a timed event, that drivers are reminded to obey all the rules of the road (including posted speed limits), and that drivers and participants must wear seatbelts and never exit or enter vehicle unless it comes to a full stop. Drivers of vehicles who are caravanning should be prohibited from socializing vehicle to vehicle, racing or competing.
- Ensure that your Church Insurance General Liability coverage includes a Non-Owned Automobile Liability Policy (also known as an SPF #6) to cover the church, its leaders and volunteers against legal liability arising out of the use of personal vehicles in a sponsored event, program or regular transportation. We recommend a minimum coverage limit of \$5,000,000.
- **Important Note:** Non-Owned Automobile Liability policies are subject to certain terms and conditions, including a territorial restriction that limits coverage to legal liability

for bodily injury arising out of accidents that occur within Canada or the United States. As an alternative to using private passenger vehicles for sponsored events, consider chartering a professional bus company who can provide a qualified professional driver and are required to carry a large minimum amount of Third Party Liability Insurance (usually \$8,000,000 for public vehicles in Canada). This transfers the risk to another qualified, experienced and well insured party, thereby allowing your leaders to focus on the participants and to fully enjoy the event.

### Part Three: Short-term Rental Vehicles

For board members, staff or volunteers who have the authority to rent vehicles for transportation within the scope of their duties for the organization, either within their community, or while away at conferences, meetings, fundraisers and other travel, there are several considerations to keep in mind in managing the risk of loss, damage and legal liability:

Loss or damage to rental vehicles is often the contractual responsibility of the renting party and at most car rental desks you will be required to assume legal responsibility for all collision or comprehensive damage to the vehicle during the period of the rental contract. While rental companies offer physical damage coverage as an option the cost is usually prohibitive, often as much as \$20 per day, which translates into an annualized premium of \$7,300! As an economical alternative, both individuals and organizations can obtain physical damage coverage on a vehicle they rent for travel or business use in Canada and the U.S.A. on their own Automobile Insurance policy through an optional endorsement called an SEF #27 – Legal Liability for Damage to Non-Owned Vehicles. However many organizations do not have a primary Automobile Insurance policy because they do not own any vehicles. In that case they can often rely on their General Liability insurance policy “if” they have an optional endorsement called an SEF #94 – Legal Liability for Damage To Hired Vehicles.

#### Following is an insurance checklist for rental vehicles:

- 1) Check with your organization’s insurance broker or agent to confirm whether your Automobile Insurance Policy contains an SEF #27 and whether it can apply to the type of vehicle you are renting. Often this endorsement restricts coverage to automobiles and mini-vans and will not cover commercial vehicles, larger passenger vans or buses.
- 2) If your organization does not have an Auto policy, but has an SEF #94 included in your General Liability Insurance policy and you want coverage to apply to a rented vehicle, the rental contract must include the name of your organization, either solely or in addition to the individual signing the contract.
- 3) An SEF #94 contains a territorial restriction limiting claims within Canada and the continental United States. Therefore claims for loss or damage in jurisdictions such as Mexico or other parts of the world are not covered.
- 4) An SEF #94 contains a maximum limit of coverage (usually no more than \$50,000) and is subject to a deductible (usually \$500 or \$1000 per claim).
- 5) Claims for loss or damage under an SEF #94 count against your General Liability policy and for this reason

many organizations choose to pay the additional premium for the optional physical damage coverage provided by the rental car agency, or that may be available through their credit card features.

- 6) Insurance companies generally offer SEF #94 coverage as a no-cost frill to their General Liability policy, however it is intended for occasional and incidental use. Frequent rentals may be subject to an additional premium charge based on the amount of rental days per year.

Legal Liability for third party bodily injuries or death arising out of an accident involving a rental vehicle has traditionally been the responsibility of the rental car agency (and its insurance company) as the registered owner of the vehicle. However since March 1, 2006 in Ontario under Bill 18, liability is now “joint and several”, meaning that the renting party can and probably will be held personally liable for injury or death. The bill places a cap on the liability of the rental car agency as owner and reorders the priority of insurance coverage amongst owners, lessees and operators for bodily injury and death claims. The priority of coverage for claims under Bill 18 now makes the renting party’s policy primary, the driver’s policy secondary and the owner’s (i.e. rental agency’s) policy excess.

For churches, charities and non-profit organizations that have a primary Auto Insurance policy for automobiles, vans or buses that are owned, or are under a long-term lease (i.e. over 30 days), coverage for legal liability resulting from third party bodily injuries resulting from the operation of a rented vehicle will be covered under their Third Party Liability, subject to the limit of insurance carried in their policy. For those who do not have primary Auto Insurance policies because they do not own or lease vehicles, the primary coverage for legal liability arising out of the use of rental vehicles in Canada and the U.S.A. would be found under their General Liability policy, but only if they have an SPF #6 – Non-Owned Automobile Liability included in their policy. In all other provinces, rental car liability is currently covered by the rental agency as owner of the vehicle.

If for some reason the rental agency’s coverage is inadequate or void in the event of a claim, your organization’s Non-Owned Auto Liability coverage would apply, subject to the coverage limit contained in your policy.

### Conclusion

An accident involving a busload or vanload of children, youth or adults can be devastating. Mending broken bodies, hearts and lives because of injuries or fatalities due to the negligence of leaders or volunteers is something no church or charity ever wants to experience. Yet through lack of information, carelessness or lax standards, many families suffer just such a catastrophe. Furthermore, multi-million dollar lawsuits and underinsurance can threaten both the assets of the organization and the personal assets of your board members.

The good news is that most accidents can be prevented by getting onboard with some basic rules and an effective formal transportation policy for drivers and vehicles. We hope these guidelines will assist your board members and staff in protecting your precious cargo and keeping your ministries and programs moving forward safely.